Supreme Court, U.S.
FILED

97-21 JUN 27 1997.

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

PERCY MAYS, JR. A/K/A "PETE" A/K/A "PEDRO" A/K/A PERCY LEE MAYS, JR.,
Petitioner,

V.

STATE OF MISSISSIPPI,
Respondent.

Petition For A Writ Of Certiorari
To The Mississippi Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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Counsel for Petitioner

16 pp

QUESTIONS PRESENTED FOR REVIEW

The following question is presented for review:

(1). Whether the Petitioner's Fifth and Fourteenth Amendment rights to due process were violated because the State failed to prove beyond a reasonable doubt that the Petitioner was predisposed to commit the crime.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW.....i

TABLE OF CONTENTS.....ii

TABLE OF AUTHORITIES.....iii

OPINIONS DELIVERED BY LOWER COURT.....1

CONSTITUTIONAL PROVISIONS INVOLVED IN CASE.....2

STATEMENT OF THE CASE.....2

ARGUMENTS FOR ALLOWANCE OF WRIT.....3

APPENDIX.....ia

Table of Contents.....ia

TABLE OF AUTHORITIES

CASES Page

Barnes v. State, 493 So. 2d 313, 315 (Miss. 1986).....4

Bush v. State, 585 So. 2d 1262, 1263-4 (Miss. 1991).....3, 4

Howard v. State, 507 So. 2d 58, 61 (Miss. 1987).....3, 4

In Re Winship, 397 U.S. 358, 361 (1970).....3

Jones v. State, 285 So. 2d 152, 155 (Miss. 1973).....4

McLemore v. State, 241 Miss., 664, 665,
125 So. 2d 86, 91 (Miss. 1960).....4

Mitchell v. State, 572 So. 2d 865, 867 (Miss. 1990).....4

Moore v. State, 534 So. 2d 557, 559 (Miss. 1988).....4

Sylar v. State, 340 So. 2d 10 (Miss. 1976).....4

Tribett v. State, 394 So. 2d 878, 881 (Miss. 1981).....4

UNITED STATES CONSTITUTION

Amendment 5.....2, 3

Amendment 14.....2, 3

PETITION FOR A WRIT OF CERTIORARI

COMES NOW, the Petitioner, Percy Mays, Jr., by and through counsel, David L. Walker, and hereby petitions the Court for writ of certiorari.

OPINION DELIVERED BY LOWER COURT

On December 17, 1996, the Court of Appeals of the State of Mississippi affirmed the Petitioner's conviction for sale of cocaine. The Petitioner's Petition for Rehearing was denied by the aforesaid Court on January 31, 1997. On April I, I997 the Mississippi Supreme Court denied the Petition for Writ of Certiorari filed by the Petitioner.

GROUNDS FOR JURISDICTION

The Court has jurisdiction in that this is a petition for a writ of certiorari from a criminal conviction alleging violation of the Petitioner's constitutional rights and involves an opinion issued by the Court of Appeals of the State of Mississippi issued on December 17, 1996, and a motion for rehearing denied on January 31, 1997, by the aforesaid Court. and a denial of a petition for writ of certiorari by the Mississippi Supreme Court. Please refer to the appendix.

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner alleges that his constitutional rights to due process as set out in the Fifth and Fourteenth Amendments of the United States Constitution have been violated.

STATEMENT OF THE CASE

The Petitioner was indicted on June 7, 1995, by a grand jury of Tate County, Mississippi for the crime of sale of a controlled substance, cocaine. He was tried on August 10, 1995. The jury returned a verdict of guilty of sale of a controlled substance, cocaine. The circuit court judge sentenced the Petitioner to fourteen years in an institution to be designated by the Department of Corrections with six years suspended. The Petitioner's Motion for a New Trial was denied on August 11, 1995, by the circuit court judge.

The Petitioner was at his home when a confidential informant for the Panola Tate Narcotics Task Force, also a friend of his, came to him indicating he wished to purchase crack cocaine. The Petitioner then sold the confidential informant a number of crack rocks which he had intended for his personal use.

ARGUMENT FOR ALLOWANCE OF WRIT

Petitioner argues that his Fifth and Fourteenth Amendment Rights to due process were violated because the Respondent failed to prove beyond a reasonable doubt that the Petitioner was predisposed to commit the crime of sale of a controlled substance. In the Supreme Court case *In Re Winship,* 397 U.S. 358, 361 (1970), it was held that due process protects the accused against conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." It is a necessary element to prove predisposition to rebut the defense of entrapment which the Petitioner asserts. *Howard v. State*, 507 So. 2d 58, 61 (Miss. 1987). The evidence reveals that the Respondent induced the Petitioner to commit this crime, which was not previously contemplated by the Petitioner, by sending a friend of his, acting as a confidential informant, to his home to request the sale of the controlled substance.

The Petitioner will concede that the scope of review on this issue is limited in that the reviewing court must consider the following:

> [A]ll of the evidence--not just supporting the case for the prosecution--in the light most consistent with the verdict. We give the prosecution the benefit of all favorable inferences that may be reasonably drawn from the evidence. If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have

found beyond a reasonable doubt that he was guilty, reversal and discharge are required.

Bush v. State, 585 So. 2d 1262, 1263-4 (Miss. 1991). *See, e.g., Mitchell v. State*, 572 So. 2d 865, 867 (Miss. 1990).

Entrapment, as defined in *McLemore v. State*, 241 Miss., 664, 665, 125 So. 2d 86, 91 (Miss. 1960), is:

> the act of inducing or leading a person to commit a crime not originally contemplated by him, for the purpose of trapping him in its commission and prosecuting him for the offense.

See, e.g., Howard, 507 So. 2d 58, 61 (Miss. 1987), *Barnes v. State*, 493 So. 2d 313, 315 (Miss. 1986), *Tribett v. State*, 394 So. 2d 878, 881 (Miss. 1981), and *Jones v. State*, 285 So. 2d 152, 155 (Miss. 1973). The Court has shown in *Moore v. State*, 534 So. 2d 557, 559 (Miss. 1988), that:

> having in mind our limited scope of review of jury verdicts, where the offense has in fact been induced by an agent of the state and where the accused, prior to inducement, was not predisposed to commit the type of offense charged, entrapment is shown and the defendant must be discharged.

See, e.g., Barnes, 493 So. 2d 313 (Miss. 1986), *Sylar v. State*, 340 So. 2d 10 (Miss. 1976), and *Jones*, 285 So. 2d. 152 (Miss. 1973). The Court also stated that when evidence of the accused's predisposition is weak, the entrapment defense should generally be sustained. *Moore*, 534 So. 2d 560.

that the Petitioner was predisposed to commit the crime with which he is charged. The Petitioner testified that he had never sold cocaine before. Although testimony was presented that the Petitioner had sold crack cocaine to the same confidential informant at an earlier date, the alleged transaction was also said to be instigated by the task force, yet it was not witnessed by any of the task force agents involved, nor was any of the alleged transaction recorded on tape. Petitioner also testified that the confidential informant involved, a friend of his, begged him to sell the drugs, otherwise he would have kept them for his personal use.

Wherefore, the Petitioner hereby petitions the Court for writ of certiorari.

Respectfully submitted,

This the 25th day of June, 1997.

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MS Bar Number: 06896

Counsel for Petitioner

APPENDIX

Table of Contents

Order of the Court of Appeals of the State of Mississippi affirming petitioner's Circuit Court conviction.....1a

Order of the Court of Appeals of the State of Mississippi denying the Petitioner's motion for rehearing.....5a

Order of theSupreme Court of Mississippi denying the Petitioner's petition for writ of certiorari.....6a

SUPREME COURT OF MISSISSIPPI

Linda Stone, Clerk
Third Floor Gartin Building
450 High Street
P.O. Box 249
Jackson, Mississippi 39205-0249

December 17, 1996

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David L. Walker
Panola County Public Defender
P.O. Box 719
Batesville, MS 38606-0719

This is to advise you that the Court of Appeals of the State of Mississippi rendered the following decision on the 17th Day of December, 1996.

Court of Appeals Case #95-KA-0871
Trial Court Case #CR9583

Percy Mays, Jr. a/k/a "Pete" a/k/a "Pedro" a/k/a
Percy Lee Mays, Jr.
vs.
State of Mississippi

The judgment of the Circuit Court of Tate County of conviction of sale of cocaine and sentence of fourteen years, with six years suspended, in the custody of the Mississippi Department of Corrections is affirmed. Costs of this appeal are taxed to the defendant, Mays.

Linda Stone, Clerk

lwp

ccs: AG notified via list
Marshall County Circuit Clerk

Notice to Chancery/Circuit/County Court Clerks
If any original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI

NO. 95-KA-00871 COA

DECIDED
OCT 24 1996

PERCY MAYS, JR. A/K/A "PETE" A/K/A "PEDRO" A/K/A PERCY LEE MAYS, JR.

V.

STATE OF MISSISSIPPI

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE:	Hon. Andrew Cleveland Baker
COURT FROM WHICH APPEALED:	Tate County Circuit Court
ATTORNEY FOR APPELLANT:	David L. Walker Panola County Public Defender
ATTORNEYS FOR APPELLEE	Office of the Attorney General By: W. Glenn Watts
DISTRICT ATTORNEY:	Robert L. Williams
NATURE OF THE CASE:	Sale of a controlled substance
TRIAL COURT DISPOSITION:	Convicted and sentenced to serve 14 yrs with last 6 yrs suspended

BEFORE FRAISER, C.J., DIAZ, AND KING, JJ.
PER CURIAM:

Mays was convicted in the Circuit Court of Tate County for the sale of crack cocaine. At trial, Mays admitted to selling crack cocaine. but alleged that he was entrapped by Houston, a confidential informant employed by the

Panola-Tate County Drug Task Force. Because Mays admits to selling crack cocaine to an agent of the Panola-Tate County Drug Task Force, the only issue necessitating resolution on appeal is whether the jury's verdict should be disturbed because Mays was entrapped.

Most cases addressing the defense of entrapment deal with the question of whether the jury should have been instructed on entrapment. *Bush v. State,* 585 So. 2d 1262, 1264 (Miss. 1991). In the instant case, the court permitted the jury to be instructed on the defense of entrapment. If the jury is instructed on entrapment, and the jury resolves the point against the defendant, "he is generally out of luck on appeal." *Bush,* 585 So. 2d at 1264 (citing *Moore v. State,* 534 So. 2d 557, 559 (Miss. 1988)).

At trial, Mays testified that he sold the cocaine because Houston begged him to do so; however, the transcript of the recorded sale does not suggest that Houston begged Mays to sell the cocaine. The jury rejected Mays' defense of entrapment and chose to believe that Mays was predisposed to commit the crime. Based upon the transcript of the recorded sale, we have no basis for disturbing the jury's conclusion. Therefore, we affirm the conviction and sentence.

THE JUDGMENT OF THE CIRCUIT COURT OF TATE COUNTY OF CONVICTION OF SALE OF COCAINE AND SENTENCE OF FOURTEEN YEARS, WITH SIX YEARS SUSPENDED, IN THE CUSTODY OF THE

MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE DEFENDANT, MAYS.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ. CONCUR.

IN THE COURT OF APPEALS
OF THE STATE OF MISSISSIPPI

NO. 95-KA-00871 COA

PERCY MAYS, JR. A/K/A "PETE" A/K/A "PEDRO" A/K/A PERCY LEE MAYS, JR. APPELLANT

v.

STATE OF MISSISSIPPI APPELLEE

FILED

JAN 31 1997

LINDA STONE, CLERK
COURT OF APPEALS

ORDER

This matter is before the Court on the Appellant's motion for rehearing. After careful and thorough consideration, the Court finds that the motion should be denied.

THEREFORE, IT IS ORDERED that the Appellant's motion for rehearing be, and hereby is, denied

SO ORDERED, this the 23 day of January, 1997.

ORIGINAL SIGNED BY:
JOHN J. FRAISER, JR., CHIEF
JUDGE FOR THE COURT

IN THE SUPREME COURT OF MISSISSIPPI

NO. 95-CT-00871-SCT

PERCY MAYS, JR. A/K/A "PETE" A/K/A "PEDRO" A/K/A PERCY LEE MAYS, JR.

v.

STATE OF MISSISSIPPI

FILED

APR 10 1997

LINDA STONE
SUPREME COURT CLERK

ORDER

This matter comes before the Court on the Petition for Writ of Certiorari filed by Percy Mays, Jr. After careful consideration, the Court finds that the petition should be denied.

IT IS THEREFORE ORDERED that the Petition for Writ of Certiorari be, and hereby is, denied.

SO ORDERED, this, the 1st day of April, 1997.

Original signed by:
DAN LEE, CHIEF JUSTICE
FOR THE COURT

TO DENY: ALL JUSTICES